

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JESSE NOAL KILLIAN,

Plaintiff,

v.

ANNE L. PRECYTHE,

Defendant.

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No. 4:22-CV-1212-RLW

MEMORANDUM AND ORDER

This matter is before the Court upon review of a pleading filed by Missouri State prisoner Jesse Noal Killian, inmate number 1342042. For the reasons explained below, this case will be dismissed without prejudice to the filing of a complaint that is accompanied by the required filing fee.

Background

The instant pleading is titled “Motion of Injunction [*sic*] for Injunctive [*sic*] Relief.” (ECF No. 1 at 1). Plaintiff prepared it using a handwritten form of his own creation, with a caption that correctly identifies this Court and identifies the defendant as Anne L. Precythe, the Director of the Missouri Department of Corrections (“MDOC”). The caption includes the words “Cause No.,” but no cause number is identified. *Id.* The pleading was initially filed in the closed civil matter styled *Killian v. Jefferson County Jail, et al.*, No. 4:21-CV-1294-JMB (E.D. Mo. Oct. 28, 2021), but after it was reviewed and determined to be unrelated to that case, it was used to open the instant civil action. *See* (ECF No. 2). Plaintiff has not paid the required filing fee, nor has he filed an Application to Proceed in District Court Without Prepaying Fees or Costs.

In the pleading, Plaintiff seeks injunctive relief to redress violations of his rights and the rights of other MDOC prisoners. Specifically, Plaintiff claims he was placed in disciplinary segregation for 21 days, a length of time that did not accord with MDOC policy and violated his right to due process. Plaintiff claims other offenders were wrongfully disciplined as well. He asks this Court to order the dismissal and expungement of the relevant offender records, and to order that “all subsequent conduct violation reports no matter the circumstance, while confined in a segregation unit that may have or may not been accused of and/or found guilty of be dismissed and expunged due to ‘fruit of the poisonous trees.’” (ECF No. 1 at 3).

Discussion

Plaintiff is a prisoner who has, on three prior occasions while incarcerated, brought an action in this United States District Court that was dismissed for one of the reasons stated in 28 U.S.C. § 1915(g).¹ The Prison Litigation Reform Act of 1996 provides, in relevant part:

In no event shall a prisoner bring a civil action ... under this section if the prisoner has, on three or more prior occasions, while incarcerated or detained in any facility, brought an action ... in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). Accordingly, this Court would be able to grant Plaintiff leave to proceed *in forma pauperis* only if his allegations established he was under imminent danger of serious physical injury.

Having thoroughly reviewed and liberally construed Plaintiff’s allegations, the Court concludes they do not establish that Plaintiff is under imminent danger of serious physical injury. Therefore, it would be futile to give Plaintiff the opportunity to file an Application to Proceed in

¹ See *Killian v. Corizon Healthcare LLC, et al.* No. 4:21-CV-1432-JCH (E.D. Mo. Mar. 8, 2022); *Killian v. Missouri Department of Corrections*, No. 4:21-CV-1351-AGF (E.D. Mo. Feb. 7, 2022); and *Killian v. Eaton, et al.*, No. 4:21-CV-1471-SRC (E.D. Mo. Dec. 22, 2021).

District Court Without Prepaying Fees or Costs because the Court would be unable to grant it. The Court will therefore dismiss this action at this time, without prejudice to Plaintiff filing a complaint that is accompanied by the required \$402 filing fee.

Accordingly,

IT IS HEREBY ORDERED that this case is **DISMISSED** without prejudice to Plaintiff filing a complaint that is accompanied by the required \$402 filing fee. A separate order of dismissal will be entered herewith.

A handwritten signature in cursive script that reads "Ronnie L. White". The signature is written in black ink and is positioned above a horizontal line.

RONNIE L. WHITE
UNITED STATES DISTRICT JUDGE

Dated this 16th day of November, 2022.